U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 3 0 2007
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Laura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a senior research engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. Counsel's assertions, including one that relies on language from a reference letter that does not appear in that letter, do not overcome the director's concerns. Ultimately, while the petitioner is recognized as having great potential, the petition appears, at best, to have been filed prematurely, before the majority of his articles had even been disseminated in the field. While the petitioner submitted positive reference letters from high level members of the field, their assertions of a general, nonspecific influence in the field are not supported by persuasive examples of that influence.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Civil Engineering from the University of Illinois at Chicago (UIC). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is

whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering. While the petitioner is currently working for a private manufacturer, he continues to prepare manuscripts for publication and several references attest to the potential application of his work beyond his employer. Thus, we are satisfied that the proposed benefits of his work, effective computer modeling relating to the performance of off-road vehicles, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner obtained a Master's degree in Geotechnical Engineering from Southwest Jiaotong University in January 1997 and then worked as a lecturer at that university for the rest of the year. During that time, the petitioner authored a published article in China. In 1998, the petitioner began studying at the University of Oklahoma, where he received a Master's degree in Civil Engineering in May 2000. As stated above, the petitioner then earned his Ph.D. in the same field from UIC in July 2003. The petitioner worked as a postdoctoral research associate at UIC through September 2004, after which he began work as a senior research engineer for Caterpillar through Volt Technical Resources, LLC. While the petitioner has prepared several manuscripts and presented his work since arriving in the United States, as of the date of filing, only one of his manuscripts had been published. Thus, as of the date of filing, the dissemination of the petitioner's work in the field had been very limited.

The petitioner relies on several reference letters, some of which are from independent experts in the field. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In evaluating the reference letters, we note that letters containing mere assertions of "influence" in the field are less persuasive than letters that provide specific examples of *how* the petitioner has influenced *specific projects*.

At the outset, it is useful to note that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. Thus, the fact that the petitioner has performed original research insofar as he is not duplicating prior research is insufficient.

Moreover, given the frequent use of the word "influence" by several references with either little explanation or examples that do not necessarily suggest any true influence in the field, it is instructive to review the definition of that word. According to The Miriam-Webster Dictionary 372 (New Ed. 2004), influence means:

> 1. to affect or alter by influence : SWAY 2: to have an effect on the condition or development of : MODIFY.

Thus, it is insufficient to rely solely on the opinions of experts that the petitioner's work is influential because it has the potential to impact projects that are in the national interest.

Dr. [redacted], a department head at Southwest Jiaotong University, asserts that the petitioner developed a two-dimensional decay-function type infinite elements for finite elements code, used to simulate the construction process of a subway station in Beijing. The petitioner also performed in situ tests to measure pressure acting on the subway as well as developing an empirical formulation to calculate pressure before designing underground structures. Dr. [redacted] also discusses the petitioner's work for the Railway Ministry of China, including establishing a general limiting state equation for railway foundation. The petitioner also proposed two methods to predict the reliability index of foundation structures. It is inherent to the field of engineering to work on ongoing projects. Dr. [redacted] does not assert that this work has had an influence on geotechnical engineering as a whole.

Dr. [redacted] Founder of the Rock Mechanics Institute and a professor at the University of Oklahoma, discusses the petitioner's work at that university. Dr. [redacted] asserts that the petitioner developed "two new three-dimensional infinite elements for fluid flow in porous media," which were more effective than conventional finite element approaches in predicting contaminant transport phenomena in soils. Dr. [redacted] explains that this work was included in technical reports and used to simulate fluid flow in naturally fractured reservoirs by his previously consulted oil companies.

Dr. [redacted], an associate professor at UIC, discusses the petitioner's work at that university. While Dr. [redacted] asserts that he was aware of the petitioner before the petitioner joined UIC through reading the petitioner's work on porous media in January 2000, it is noted that the petitioner's only article published prior to 2005 is his Chinese language article in 1997 and that article does not appear to be about porous media. At UIC, the petitioner developed "a new cosine constitutive model for shape memory alloys based on experimental results published in open literature." The petitioner then "designed research to integrate the constitutive model into nonlinear finite element code,"

validating his predictions with uniaxial test results. The petitioner then "took his research to the next level by extending his work to [a] large deformation framework," becoming the first researcher to have done large deformation analysis for shape memory alloys. We note that, in response to the director's request for additional evidence, the petitioner submitted a citation of the petitioner's post-filing article on shape memory alloys. The citing article does not single out the petitioner's article as significant, rather, it cites the petitioner's article as one of seven "earlier work[s] on multiscale methods."

Dr. [redacted], another professor at UIC, asserts that the petitioner's finite element formulation "allows linear elements to remove volumetric locking for incompressible solid material and stabilize the pressure field for incompressible fluid." Dr. [redacted] asserts that the "significance of his research and its influence to priority efforts in our field lies in the fact that [the petitioner's] methods contain numerous mathematical and physical meanings." As discussed above, we will not presume that the petitioner has already influenced the field simply because of the potential applications of his work. Significantly, Dr. [redacted] a former visiting senior scientist at UIC, asserts that the "integration of his constitutive model into commercial engineering computer codes *may* have tremendous impact on the application of shape memory alloys in high technology areas." (Emphasis added.) Dr. [redacted] speculation as to the future impact the petitioner's work may have does not suggest that the petitioner has already influenced the field.

The petitioner also submitted a letter from Dr. [redacted] at the National Science Foundation (NSF), one of the entities that has funded the petitioner's projects. Dr. [redacted] indicates that he is the officer at NSF with oversight over the petitioner's area of research, and, thus, that he is "able to establish" the petitioner's "influence" in the field of shape memory alloys. Dr. [redacted] then praises the petitioner's computational methods, acknowledges that his published work is not widely cited, but asserts that "it has directly impacted methods[,] practices and standards employed within industry and in our initiatives." Dr. [redacted], however, fails to provide examples of research groups or manufacturers who have adopted the petitioner's models. It is not clear that by using the phrase "our initiatives" that Dr. [redacted] is specifically referring to NSF as Dr. [redacted] earlier uses "our" to refer to the field in general.

In addition, the petitioner developed a method "which is an important part to effectively" solve the problem of overestimating the collapse load for a structural system. Dr. [redacted] asserts that the petitioner was the first to present "such a clean and stable mathematical formulation" that produces a single variational equation rather than solving the problem at two different levels. Dr. [redacted] asserts that this work has been "extended to predict fluid-structure interaction in Naval research done by our research group." The petitioner was also the first researcher to derive second derivatives of shape functions and apply it to study the Galerkin/Least-square (GLS) method, which had been neglected in previous studies. The petitioner also observed that the GLS method has an intrinsic difficulty to study nonlinear material behavior. Not only had this work not been published as of the date of filing, it had been returned with critical reviews. We acknowledge that, subsequent to the date of filing, a revised version of this work has been published. The petitioner, however, must establish eligibility

as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Finally, Dr. [redacted] discusses the petitioner's work on models for nanotubes. Specifically, developing an effective multiscale computation able to link atomic scale physics with continuum scale phenomena is critical in applying nanotechnology. The petitioner's work "led to a new approach by which atomistic energy is assumed to be equivalent to the strain energy density of hyperelasticity in continuum mechanics." Dr. [redacted] asserts that initial simulations show that the petitioner's proposed method "can produce reasonable macromechanical behavior."

In a subsequent letter, Dr. [redacted] asserts that the petitioner has influenced work at UIC, which is "credited for producing research which is among the best in international efforts to develop better computational approaches in this area." Dr. [redacted] however, does not reference articles in trade journals or the general media that recognize work performed at UIC to which the petitioner contributed. Dr. [redacted] references a report to the National Center for Supercomputing Applications (NCSA), for which his laboratory performs research, highlighting the petitioner's published and pending article. The record contains no evidence that this report is significant. For example, it is not unusual for a research team to provide updates to the entity funding or commissioning the research. Such reports are not evidence that the reported research has proven influential.

On the second page of his appellate brief, counsel identifies Dr. [redacted], a member of the U.S. National Academy of Engineering (NAE), as one of the "independent experts outside of [the petitioner's] circle of colleagues." Dr. [redacted] however, while issuing his letter on the letterhead of his corporation, is also a professor at UIC as he acknowledges in his letter. Thus, while he may never have directly collaborated with the petitioner, he is not outside of the petitioner's circle of colleagues. While we accord significant weight to letters from members of the NAE, the mere submission of a letter from an academy member is not presumptive evidence of eligibility. At issue is the content of the letter. Dr. [redacted] singles out the petitioner's work with the GLS model. As stated above, however, the petitioner's manuscript on this subject had yet to be published as of the date of filing. Dr. [redacted] continues:

> While [the petitioner's] work has not been widely cited, I attest that it has directly influenced the approaches and methods of international experts in our field, including myself. As a leader in the field of fluid-structure interaction and hydrodynamics, it is my opinion that [the petitioner's] developed multiscale/stabilized finite element, and his continued work in this area, is demonstrated to be a powerful and important tool to simulate a variety of steady and unsteady fluid-structure interactions. It is for that reason that I follow his methods for application to my area of research.

While Dr. [redacted] asserts that the petitioner's models are being applied internationally, he does not provide a single example of a foreign engineering laboratory, or even a laboratory beyond UIC or Caterpillar, that has applied the petitioner's models. Dr. [redacted] concludes that the "importance

and influence of [the petitioner's] current research is demonstrated by its direct application and use in high priority heavy machinery and vehicle research and development (including research relevant to US defense combat engineering vehicles) with one of the leading entities involved in such efforts – Caterpillar." As stated above, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218.

Dr. [redacted], an associate professor at UIC, asserts that the petitioner was performing research for Caterpillar at UIC. Dr. [redacted] explains that having "been credited for considerable developments in computational modeling," the petitioner was invited to join Caterpillar's machine research team. Dr. [redacted], a team leader at Caterpillar, asserts that track/soil interaction models are important for Caterpillar, which builds off-road vehicles that utilize tracks instead of wheels to distribute the weight of the vehicle over a larger surface area. The petitioner developed a new computational framework for this interaction, which has "proven to be of extreme importance" to Caterpillar's research and development. Dr. [redacted] confirms that, while ongoing, this work has produced tangible results and assisted the company's understanding of the interaction between soil and machine.

In addition, Dr. [redacted] asserts that previous models for earthmoving equipment were not able to fully capture the process and that field tests were expensive. As of the date of filing, the petitioner had innovated the blade-soil interaction model with nine new features, resulting in a three-dimensional model able to account for the tilted and angled blade operations as well as for uphill and downhill dozing.

Further, the petitioner developed a model that can accurately predict the compaction process of unsaturated subgrade soil and pavement surface asphalt subjected to various environmental conditions. Dr. [redacted] predicts that this work will allow Caterpillar to improve the technology for transportation construction.

Finally, Dr. [redacted] discusses his collaboration with the petitioner to develop models for landfill compaction. According to Dr. [redacted]i, their model has produced good results so far, but it appears that this work is still ongoing. Dr. [redacted] merely predicts that their research will solve certain environmental problems associated with landfills and "will be beneficial to U.S. national environmental protection." As of the date of filing, Dr. [redacted] and the petitioner had coauthored a manuscript on landfills submitted for publication but the article had yet to be published in a peer-reviewed journal.

The above letters are all from the petitioner's immediate circle of colleagues. While such letters are useful in explaining the petitioner's role on various projects, they cannot, by themselves, establish his influence in the field generally. In response to the director's request for additional evidence, the petitioner submitted more independent letters.

Dr. [redacted]ji, Chair of the Civil Engineering Department at the University of New Mexico, asserts that based on the petitioner's record in "our mutually common area of study" he is "able to establish

[the petitioner's] importance to U.S. priority and national interest." Dr. [redacted] further asserts that he is "able to demonstrate [the petitioner's] influence in this regard to our field and to our special efforts." Dr. [redacted] affirms that the petitioner "is credited with" a study on the computer simulation of shape memory alloys that Dr. [redacted] considers "to be among the best internationally." On appeal, counsel quotes the majority of Dr. [redacted] letter. Counsel, however, adds a phrase that does not appear in Dr. [redacted] letter. Specifically, counsel's version includes the sentence: "Through this letter, I can verify that his work has directly influenced our field and priority efforts in this country *including our AFRL work*." (Emphasis added.) Dr. [redacted] letter, however, does not include the emphasized phrase "including our AFRL work." This is a significant misquote by counsel as Dr. [redacted] does not expressly state that his own work has been influenced by the petitioner. Dr. [redacted] then states that the significance of the petitioner's work is evident simply from its very publication. We will not, however, presume the influence of a given article from the prestige of the journal in which it appears. Rather, the petitioner must demonstrate the influence of the individual article.

Dr. [redacted] Director of the Cornell Fracture Group, states: "The significance and influence of [the petitioner's] research to our field and to those efforts is that [he] is credited with developing a new phenomenological constitutive model for smart material shape memory alloys (SMAs), which can effectively exhibit the relationship between superelastic large deformation and the martensite phase transformation." Dr. [redacted] subsequently asserts that the "impact" of the petitioner's work on stabilized finite elements for material and geometric nonlinearity is demonstrated by the acceptance of this work for publication.

While we do not question Dr. [redacted] expertise in the field or sincerity, our interpretation of "influence" as contemplated in *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 219, n.6., is that it requires more than being "credited" with the design of a model or authoring a pending article. Being credited with the design of a model is not presumptive evidence that the model is influential in the field. More specifically, an alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221, n. 7. In evaluating whether the specific innovation serves the national interest, the importance of the area of research is insufficient by itself. The petitioner must also demonstrate that the field recognizes the value of the specific innovation. Finally, the act of acceptance into a journal does not suggest that the manuscript is already influential. It cannot be credibly asserted that an article that has yet to be disseminated in the field has already influenced that field.

The petitioner submitted a similar letter from Dr. [redacted], Chair of the Structural Engineering/Mechanical Program at the [redacted]. Dr. [redacted]'s first example of the petitioner's "influential efforts" is his work on the GLS method, which had yet to be published as of the date of filing. Dr. [redacted] further asserts that the petitioner's original work demonstrating that compacted density can be predicted based on the finite deformation theory is "a good example to demonstrate the influence of [the petitioner's] unique research contributions to priority U.S. efforts."

While the petitioner's work may be original, the petitioner must demonstrate some type of acceptance or application in the field in order to establish his influence.

As noted by the director, the record lacks evidence that the petitioner's work has been widely or frequently cited by independent research teams in the field. On appeal, counsel asserts that while "citations certainly constitute useful objective evidence of the cited article's significance, the complete record must be considered." Counsel then notes that several references have provided explanations as to why the petitioner has not been widely cited and have attested to his influence. We concur with counsel that a lack of citations is not dispositive. Issues such as intellectual property considerations, can limit a researcher's publications and citations to his work. Dr. [redacted] attributes the lack of citation to the petitioner's work to the fact that he produces new and better technology rather than "published reports." Dr. [redacted] explanation, however, is not consistent with the record. While the petitioner had only published two articles as of the date of filing, it is clear that this minimal publication record was not due to proprietary interests for his employer. The petitioner had several manuscripts pending, including manuscripts reporting on some of the areas identified as significant by the references. Thus, his lack of citation would appear to be due to the fact that his manuscripts remained pending when the petition was filed. While letters from independent experts who were already aware of the petitioner's work and were applying the work in their own laboratories can often demonstrate an alien's influence, letters containing bare assertions of a nonspecific influence are less persuasive.

It remains, while the petitioner has demonstrated that his work is viewed as having great potential by experts in the field, he had only published two articles as of the date of filing. Without dissemination in the field as of the date of filing, we cannot gauge its impact. Thus, at best, the petition was filed prematurely, before the influence of the petitioner's models could be gauged.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.